ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
	)	
Rate Regulation	)	

To: The Commission

COMMENTS OF MGB ASSOCIATES, INC.

MGB Associates, Inc. (MGB) herewith offers its Comments in connection with Rate Regulation, insofar as it is to be administered by franchising authorities and their qualifications therefor. MGB, organized and incorporated in April, 1992, is a cable television consulting firm to political subdivisions and to cable systems in connection with the franchising, renewal of franchises and regulation of cable television systems.[1] Accordingly, it is intensely interested

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[1] MGB approaches local cable regulatory matters from the technical, legal, financial, and perceptual research perspectives. It operates as an umbrella in the multidiscipline representation of its clients in legislative drafting and enactment, franchise negotiations and administrative hearings. Legal services are provided through Midlen & Guillot, Chartered, Washington, D. C.; technical assistance and evaluation through World Media, Inc., Forest (Lynchburg), Virginia; financial evaluation and auditing through a Big Six accounting firm; and survey and other performance evaluation through a statistical research company and/or World Media, Inc.

in the development of the area of rate regulation -- an area that, for different reasons, is, or should be, of especially critical importance to both franchisor and franchisee. The ultimate beneficiary or victim will be the consuming public. As the Commission treads into this area, it is important that the lessons learned from a long history of false financial certifications in the broadcast application field not be forgotten. For the reasons that follow, it would appear that the Commission, in its Notice of Proposed Rule Making,[2] is embarking along the same path of social experimentation in the good faith and objectivity of self-evaluation by franchising authorities that it traveled relative to financial certification by broadcast applicants -- with disastrous and expensive results ultimately leading to the reimposition of demonstration of qualifications.[3]

Certification and the 1992 Cable Act. The 1992 Cable Act iterates the policy of Congress **to ensure**, "where cable television systems are not subject to effective competition,"[4] *i.e.*, where rate regulation jurisdiction exists in franchising

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[2] *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 (Rate Regulation)*, FCC 92-544 (released December 24, 1992)("NPRM").

[3] *Revision of Application for Construction Permit for Commercial Broadcast Station*, 4 FCC Rcd 3853, 3858-60 (1989).

[4] Cable Television Consumer Protection and Competition Act, Pub. L. No. 102, § 2(b)(4), 106 Stat. 1460, 1463 (1992).

authorities,[5] **"that consumer interests are protected in receipt of cable service...."**(emphasis supplied). This is, by its own terms, a weighty policy and one which is certainly not self-executing. If rate regulation of the basic service tier is to protect consumer interests, it is essential that the franchising authority know what it is doing. Nothing in the Commission's proposed certification scheme is designed to establish that the franchising authority, when it perfunctorily certifies that it "ha[s] the personnel to administer" "regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. § 543(b)," *Proposed Form for Local Franchising Authority Certification* ("Proposed Certification Form"),[6] does in fact have them.

The 1992 Cable Act does not mandate or contemplate certification in a vacuum, as would be the case were Proposed Certification Form to be adopted as it appears in Appendix D. Indeed, Section 623(a)(4) provides that the franchising authority's certification shall be effective thirty days from the time it is filed with the FCC "unless the Commission finds" that the certifying authority has regulations inconsistent with those of the Commission, that it does not have legal authority to adopt its regulations, that it has not

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[5] *Id.* at § 3(a)(amending Section 623 of the Communications Act of 1934).

[6] Appendix D to NPRM, *supra* note 2, at ¶¶ 3, 4(b).

the personnel to adopt them or that the certifying franchise authority's procedural laws and regulations "do not provided a reasonable opportunity for consideration of the views of interested parties." 106 Stat. at 1464-65. Given the Proposed Certification Form, in its current makeup, there is no conceivable way that the Commission could have any information before it to make any such findings. It has nothing to examine to ensure that the franchising authority's certification is accurate. That the Commission may later revoke the franchising authority's jurisdiction[7] is no substitute for a knowledgeable and meaningful review, in the first instance, of all certifications. Just as the Commission "find[s] it reasonable to require that local franchising authorities provide evidence of the lack of effective competition as a threshold matter of jurisdiction,"[8] so too should it require evidence of regulatory qualification.

In *Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits*,[9] the Commission said:

> after five years of experience with the financial certification requirement in lieu of documentation, it is clear that a number of broadcast construction permit applicants have *certified their financial qualifications without any basis or justification.*[4] Such *false certifications constitute abuses of the*

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[7] 47 U.S.C. § 623(a)(5).

[8] NPRM at ¶ 17.

[9] 2 FCC Rcd 2122 (1987).

> *Commission's processes.* They waste the resources of both the Commission and legitimate qualified applicants.... Further, such false certifications constitute material misrepresentations to the Commission ... [emphasis supplied].

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[4] *See, e.g., Dutchess Communications Corporation*, 101 FCC 2d 243, 245 n.3 (Rev. Bd. 1985), and cases cited therein. In that case, the Review Board observed that, despite their financial certifications, "applicant after applicant is sorely deficient in this regard." *Id.*

Among other things, it was noted that such is a crime. 2 FCC Rcd at 2123, n.8.

It is a time-honored and elementary principle of statutory construction that all aspects of any given enactment are presumed to have meaning. Under the scenario that would emerge were the Proposed Certification Form to be adopted -- without any threshold showing of qualification -- Section 623(a)(4) of the 1992 Cable Act would be emasculated.

For the foregoing reasons, any certification adopted herein in conformance with the Act should also include the necessary documentation/showing to make it meaningful.

Respectfully submitted,

MGB ASSOCIATES, INC.

By: John H. Midlen, Jr.
John H. Midlen, Jr.,
President

3238 Prospect Street, N.W.
Washington, D. C. 20007
202-333-1500

236 Ivy Lake Drive
Forest, Virginia 24551
804-525-0900

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